

MASTER AGREEMENT

AGREEMENT FOR TEMPORARY USE OF RIGHT OF WAY DURING “STATE LEAD” PETROLEUM SUBSTANCE INVESTIGATION

THIS AGREEMENT IS MADE by and between the Texas Department of Transportation, hereinafter referred to as “TxDOT,” and the Texas Natural Resource Conservation Commission, hereinafter referred to as “TNRCC.”

WITNESSETH

WHEREAS, pursuant to its authority under §26.014 of the Texas Water Code, TNRCC finds it necessary from time to time to enter certain public property under the control and jurisdiction of TxDOT to establish the presence and extent, or absence, of hazardous materials or petroleum products in soils and/or groundwater adjacent to a leaking petroleum storage tank site; and

WHEREAS, Chapter 203 of the Texas Transportation Code empowers the Texas Transportation Commission and TxDOT to lay out, construct, maintain, and operate the state highway system; and

WHEREAS, TxDOT has determined that when such entry is in the public interest and will not damage the highway facility, impair safety, impede maintenance, or in any way restrict the operation of the highway facility, TNRCC will be provided temporary rights of entry onto highway rights of way;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as set forth, it is hereby agreed as follows:

AGREEMENT

Article 1. Notice to TxDOT

A. Not later than five working days before entry to a site is needed, TNRCC’s contractor should provide the District Engineer of the local TxDOT district in which the site is located with a copy of its written project authorization from TNRCC, along with the contractor’s request for right of way entry onto the site. This request must be made on the form attached hereto and labeled Exhibit A, Request for Access. Entry onto certain portions of the right-of-way of controlled access facilities requires prior approval from the Federal Highway Administration. In the event that TNRCC requires entry onto that portion of the right-of-way to which access is controlled, the

TNRCC contractor should notify TxDOT at least fifteen working days in advance to allow time to obtain the necessary FHWA approval.

B. The District Engineer should review the TNRCC contractor's request and determine whether any construction or maintenance activities have been scheduled that might affect the site investigation, or if any special conditions exist that might otherwise impact the investigation.

C. Right of entry should be limited to site investigation associated with petroleum storage tanks, and authorized tasks should include (1) The taking of surface and subsurface soil, surface water, and ground water as necessary; (2) The drilling of subsurface borings; (3) Other actions related to the investigation of subsurface, surface and other above ground (i.e. structure) contamination; and (4) The installation and periodic sampling of monitoring wells.

D. If the District Engineer determines that the request will not conflict with already scheduled maintenance or other activities and that it is in TxDOT's best interest to do so, he or she will authorize TNRCC's entry onto the right of way, using the form attached hereto and labeled Exhibit B, Right of Entry.

E. Upon receiving the Right of Entry, TNRCC should comply with all terms and conditions of this agreement and the specifications included in the permit, and should further require its contractors to comply therewith.

F. In the event of an Emergency Response Action, the advance notice requirements in paragraph A are waived and notice to the District Engineer of the local TxDOT district should be provided within one working day of any action.

Article 2. Site Investigation

A. At all times when on TxDOT right-of-way, TNRCC staff, its contractors and their respective employees, agents, and representatives should wear protective clothing including but not limited to protective head gear such as hard hats, protective footwear such as steel-toed shoes, and reflective vests visible to the traveling public.

B. All site investigations should be conducted in accordance with all applicable federal and state laws, regulations, and policies.

C. Pursuant to §203.031 of the Transportation Code, entry onto the right-of-way of any controlled access facility should be allowed only from the outer edge of the right-of-way by way of frontage roads, nearby or adjacent public roads or streets, or trails along or near the highway right-of-way that connect to an intersecting road.

D. If the Right of Entry provides that the paved surface of the road may be disturbed, the TNRCC contractor should notify the District Engineer at least 16 working hours in advance before performing any task that will result in disturbing the pavement.

E. The TNRCC contractor should notify the District Engineer at least 16 working hours in advance before installing any equipment, structure, or other object intended to remain in place for more than 48 hours.

F. If the Right of Entry provides for entry onto the pavement, the TNRCC contractor should notify the District Engineer at least 16 working hours in advance before closing one or more traffic lanes or otherwise interfering with the flow of traffic in any way. All such lane closures or traffic interference should comply with the traffic control plan approved by TxDOT and included in the Right of Entry. TNRCC should install the traffic control devices, and all traffic control should comply with the *Texas Manual on Uniform Traffic Control Devices*.

G. In the event of an Emergency Response Action, the advance notice requirement in paragraphs D, E, and F above are waived, but TNRCC or its contractor should notify TxDOT of the emergency action as soon as possible.

H. If during the site investigation TxDOT must perform or authorize a contractor to perform routine or special maintenance, TNRCC will cooperate with TxDOT maintenance requirements.

I. The District Engineer and the TNRCC contractor are authorized to communicate directly with one another to coordinate, clarify, or otherwise discuss site investigation activities.

J. If it becomes necessary for TNRCC to curtail the investigation because of damages due to flooding, accident, or other catastrophic events, TNRCC should not resume investigation until notified by TxDOT to do so. TxDOT will proceed in a timely manner with any repair of damage caused by the above events.

Article 3. Concluding the Investigation

A. TNRCC or its contractor should notify the District Engineer when investigation activities have been completed. If one or more monitoring wells are installed, the requirements of this agreement should survive the conclusion of initial activities.

B. TNRCC or its contractor should restore the right of way to its original condition at the conclusion of the investigation. TxDOT should inspect the right of way after any such restoration and determine that the original condition has been restored. If the right of way is found not to have been restored to its original condition, TxDOT and TNRCC will enter into an interagency agreement for TxDOT to repair the damage at TNRCC's expense.

C. If the investigation results in a determination that entry on TxDOT right of way for purposes of remediation is advisable or necessary, TNRCC and TxDOT should execute a separate agreement for that purpose.

Article 4. General Terms and Conditions

A. Prior to commencement of the investigation and before entry onto the right-of-way, TxDOT must be furnished with the TNRCC contractor's proof of insurance using TxDOT's Certificate of Insurance, Form 1560, as currently revised. The limits of the policy should remain in effect for the duration of the investigation. TxDOT should be named as an Additional Insured with a Waiver of Subrogation in favor of TxDOT.

B. TxDOT's authorization to allow TNRCC and its contractor a right of entry onto the site identified in each Right of Entry form does not in any way impair or relinquish TxDOT's right to use such land for right of way purposes when it is required for construction or reconstruction of the traffic facility for which it was acquire, nor should use of the land for other than highway purposes under this agreement ever be construed as abandonment of the land by TxDOT.

C. TNRCC and TxDOT each acknowledge responsibility for the acts, deed, errors and omissions of its own employees.

D. TNRCC should require its contractor to indemnify TxDOT against any and all damages claims for damages, including those resulting from injury to or death of persons or for loss of or damage to property, proximately arising out of, incident to, or in any manner connected with the investigation. This indemnification should extend to and include any and all court costs, attorney's fees and expenses proximately related to or connected with any claims or suits for damages.

E. TxDOT should notify TNRCC of any utility installations owned by third parties known to be located on the right-of-way. TNRCC should provide adequate notice of the investigation and/or remediation to all utility owners identified by either TxDOT or TNRCC who are potentially impacted by the investigation.

F. TNRCC should provide a copy of this agreement to its contractor prior to commencement of the investigation.

G. Each party reserves the right to terminate this agreement at any time after notifying the other party in writing at least thirty (30) days in advance of the intended termination and establishing the conditions of termination.

IN WITNESS WHEREOF, TxDOT and TNRCC have executed duplicate counterparts to effectuate this agreement.

THE TEXAS DEPARTMENT OF TRANSPORTATION

Executed for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission under the authority of Minute Order 100002.

By Charles W. Heald, P.E. Date 7-29-98
Charles W. Heald, P.E., Executive Director

Headquarters Address 125 E. 11th Street, Austin, Texas 78701-2483

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

By Jeffrey A. Gentry Date 7/23/98
Executive Director

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